2011 discharge: European Securities and Markets Authority (ESMA)

2012/2209(DEC) - 18/09/2012 - Court of Auditors: opinion, report

PURPOSE: presentation of the EU Court of Auditors' report on the annual accounts of the European Securities and Markets Authority for the financial year 2011, together with the Authority's replies.

CONTENT: in accordance with the tasks conferred on the Court of Auditors by the Treaty on the Functioning of the European Union, the Court presents to the European Parliament and to the Council, in the context of the discharge procedure, a Statement of Assurance as to the reliability of the annual accounts of each institution, body or agency of the EU, and the legality and regularity of the transactions underlying them, on the basis of an independent external audit.

This audit concerned, amongst others, the annual accounts of the European Securities and Markets Authority (ESMA).

In the Court's opinion, the **Authority's Annual Accounts fairly present, in all material respects, its financial position as of 31 December 2011** and the results of its operations and its cash flows for the year then ended, in accordance with the provisions of its Financial Regulation.

The Court also considers that the **transactions underlying the annual accounts** of the Authority for the financial year ended 31 December 2011 are, in all material respects, **legal and regular**.

The report confirms that the Authority's 2011 budget amounted to EUR 16.9 million. The number of staff employed by the Authority at the end of the year was 57.

The report also makes a series of observations on the budgetary and financial management of the Authority, accompanied by the latter's response. The main observations may be summarised as follows:

Court's comments:

- implementation rate: the Court states that the low budget execution rates indicate difficulties in budget planning and implementation. At the end of 2011, ESMA recorded a positive budget outturn of EUR 4.3 million. The full amount was then recorded in the accounts as a liability towards the European Commission;
- OLAF: ESMA had not yet reached an interinstitutional agreement with the European Anti-Fraud Office (OLAF) on fraud investigations. The Authority should ensure that its Financial Regulation is fully implemented in this respect;
- recruitment: the Court considers that the Authority needs to improve the transparency of recruitment procedures. The number of years of experience required for a given position was not respected, applications received after the deadline were accepted, questions for oral and written tests were not set before the applications were examined by the selection board and there was no decision of the Appointing Authority to appoint the selection board.

Authority's replies:

- 2011 was ESMA's first year of operations, although its Founding Regulation had only been published on 15 December 2010. This late publication of the Regulation prevented ESMA from launching its recruitments on time, impacting directly its spending rate. Furthermore, most of

ESMA's IT objectives/ projects were delayed due to delays in the legislation requiring the implementation of such systems;

- as regards OLAF, ESMA states that it sent a letter to OLAF containing its Management Board's approved anti-fraud rules in order to begin setting up this agreement. OLAF has not responded to date;
- on recruitment, following the first visit of the Court of Auditors in October 2011, ESMA revised its recruitment procedures to address the mentioned issues in February 2012.

Lastly, the Court of Auditors' report contains a summary of the **Authority's activities in 2011**. This is focused on the following:

- 15 credit rating agencies (CRAs) registered and first on-site inspections of CRAs including Fitch, Moody's and Standard & Poor's;
- assessed the compliance of three new proposals for Markets in Financial Instruments Directive (MiFID) pre-trade transparency waivers;
- continued work on commodities and on MiFID review;
- preparatory work for proposed technical standards for the regulation on OTC derivatives, Central Clearing Counterparties (CCPs) and Trade Repositories (European Market Infrastructure Regulation - EMIR);
- joint work with the other ESAs;
- enhanced financial consumer protection through additional rules and requirements for intermediaries and fund managers;
- first pan-European product warning on foreign exchange to investors;
- developed successful IT solution for the publication of CRA historical ratings;
- conducted two peer reviews on market abuse and prospectus.